

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

**ANGELO R. RESCIGNO, SR.,
AS EXECUTOR OF THE ESTATE
OF CHERYL B. CANFIELD,**

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:
:

Plaintiff

:

CIVIL ACTION NO. 3:16-85

v.

:

(JUDGE MANNION)

**STATOIL USA ONSHORE
PROPERTIES INC.,**

:
:
:

Defendant

MEMORANDUM

Presently before the court is a motion to exclude the plaintiff Angelo R. Rescigno's untimely reply brief filed by Alan Marbaker, Carol Marbaker, and Jerry L. Cavalier ("Objectors"). ([Doc. 196](#)). Also before the court is a motion to clarify the court's December 8, 2020 order. ([Doc. 201](#)). For the reasons set forth below, both motions will be **DENIED**.

I. BACKGROUND

The pertinent background is as follows. On July 8, 2020, the court issued an order, among other things, establishing the date for a final fairness hearing as well as dates for various prehearing submissions. ([Doc. 153](#)). Pertinent here, the order provided that the "[d]eadline to file replies in support of the settlement, plan of administration, and/or any attorneys' fees and

expenses” is “[s]even (7) days prior to the settlement hearing.” ([Doc. 153, at 3](#)). On July 10, 2020, Objectors filed an appeal of the court’s order denying their motion to intervene. ([Doc. 154](#)). They also filed a motion to stay the proceedings pending their appeal. ([Doc. 155](#)).

As a result of the tight timeframe, the court issued an order setting an expedited briefing schedule regarding the motion to stay and modified its prior scheduling order by extending all deadlines by fourteen days. ([Doc. 160](#)).

On September 24, 2020, Rescigno filed a motion for final approval of the class action settlement, ([Doc. 175](#)). Rescigno filed a brief in support the same day. ([Doc. 176](#)). Objectors’ filed objections to the motion for final approval. ([Doc. 188](#)). On November 4, 2020, Objectors filed a motion to exclude any untimely reply brief in support of final approval from Rescigno. ([Doc. 196](#)). Objectors filed a brief in support of their motion the same day. ([Doc. 197](#)). Rescigno filed a brief in opposition, ([Doc. 198](#)), and Objectors filed a reply brief, ([Doc. 199](#)).

On December 8, 2020, the court issued a scheduling order in which it continued the previously scheduled final approval hearing to February 3, 2021. ([Doc. 200](#)). In light of restrictions on in-person hearings, the court ultimately continued the hearing to April 22, 2021. ([Doc. 211](#)).

Objectors then filed the present motion to clarify the December 8 Order, ([Doc. 201](#)), and a brief in support, ([Doc. 202](#)). Rescigno filed a brief in opposition, ([Doc. 204](#)), and Objectors filed a reply brief, ([Doc. 205](#)).

II. DISCUSSION

In their motion to exclude, Objectors seek to preemptively exclude any reply brief Rescigno might file. Objectors assert that October 23, 2020, was the deadline for Rescigno to file his reply, pursuant to the court's July 8, 2020 order, ([Doc. 153](#)), as modified by the court's July 16, 2020 order, ([Doc. 160](#)). Although Objectors note that Rescigno obtained an exception to the page limitation, ([Doc. 194](#)), they argue Rescigno did not seek or obtain an extension of time to file.

In their motion to clarify, Objectors "seek clarification that the Court's December 8 Order is not intended to resolve Objectors' Motion to Bar Plaintiff from Filing an Untimely Reply in Support of Final Approval or condone Plaintiff's ongoing delay in filing a reply brief that he has repeatedly represented he is ready to file." ([Doc. 202, at 3](#)).

Rescigno states it is complying with the court's July 8, 2020 order which specifically provides that the reply brief is due seven days prior to the hearing. The court agrees. In light of the clear language of the order and the fact that the hearing is scheduled for April 22, 2021, Rescigno's brief is not due until

April 15, 2021. Accordingly, the motion to exclude Rescigno's reply brief, ([Doc. 196](#)), and the motion to clarify, ([Doc. 201](#)), is **DENIED**.

s/ Malachy E. Mannion

MALACHY E. MANNION
United States District Judge

DATE: April 15, 2021

16-0085-07